Supreme Court
FILED
031651 MAR 20 2004

No. ----------

In the Supreme Court of the United States

Robert Boyadjian, PETITIONER

v.

TRANS UNION CORPORATION

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Did The Court of Appeals for the Third Circuit abused its discretion by affirming the decision of The District Court of New Jersey, to deny Petitioner's Notice of Appeal as untimely, mailed within a radius of 30 miles, on October 29, 2002 and filed on November 7, 2002, without consideration to any mailbox rules and without the availability of the postmark, either lost or misplaced at the Clerk's Office and by denying the Motion To Submit USPS Form 3817 certificate of mailing, to establish the date of mailing ?

2) Did The Court of Appeals for the Third Circuit erred or abused its discretion by affirming the decision of The District Court of New Jersey, granting Respondent summary judgment based on a claim (third party disclosures, under the Fair Credit Reporting Act) that Petitioner did not make and refuted on three instances?

3) Did The Court of Appeals for the Third Circuit erred or abused its discretion by denying Petitioner his motion to release from a judgment of The District Court of New Jersey, which was based on a claim (disclosure to consumer), erroneously adjudicated without any evidence of mailing consistent with any known mailbox rule, federal statutes or Rule of Evidence?.

4) Did The Court of Appeals for the Third Circuit erred or abused its discretion by affirming the decision of The District Court of New Jersey, granting Respondent, cost and fees inconsistent with or in violation of USC 15 Sec. 1681n (a)(3)?

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B. Citations Of The Official And Unofficial Reports Of The Opinions And Orders Entered In The Case By Courts Or Administrative Agencies.

1. Complaint filed by petitioner on June 29, 2001.
2. Order granting motion to compel defendant to submit relevant document; filed September 4, 2001.
3. Order granting motion for reconsideration of order , and denying motion to compel deft. To submit relevant document filed October 15, 2001.
4. Opinion by the court filed February 21, 2002.
5. Order denying motion for summary judgment for pltf., filed February 21, 2002.
6. Order setting oral argument on 3/19/02; filed March 14, 2002.
7. Order granting in part, denying in part motion to compel disclosure; denying motion for restraining order to prevent destruction or alteration of evidence; granting in part, denying in part motion to deny deft's objections to interrogatories; and directing each party to provide certain documents for purpose of discovery filed March 21, 2002.
8. Memorandum and order denying motion for reconsideration of order; denying motion for summary judgment in favor of deft.; denying motion to join additional party; Directing Trans Union to provide the pltf. & the court a copy of the pltf.'s credit report by 5/22/02; Granting pltf. Leave to file an amended complaint by 6/6/02. filed April 22, 2002.
9. Memorandum and order granting motion to submit and serve a supplemental pleading. Deft. Trans Union need not to respond to these submissions.

Directing the clerk to file pltf's informal briefs. Filed May 31, 2002.

10. Memorandum and order, directing the Clerk to file certain letters as part of the record and directing said documents not to be submitted to the parties as part of the memorandum and Order granting motion for summary judgment in favor of deft. Filed 6/19/02
11. Case Close (SA) filed 6/19/02
12. Order denying as moot motion to exclude certain evidence; filed 7/15/02
13. Memorandum and order denying motion for reconsideration of order granting motion for summary judgment in favor of deft. Filed 10/03/02
14. Notice of Appeal by plaintiff, filed 11/7/02.
15. Memorandum and order, denying motion to extend time to file Notice of Appeal; filed 1/22/03
16. Memorandum and order denying motion to relieve pltf. From judgment and Order entered on 6/19/02; denying motion for reconsideration of order. Filed 3/17/03
17. Judgment of USCA (certified copy) dismissing appeal for lack of jurisdiction; appeal no. 02-4153. (DS) Filed 3/19/03
18. Opinion and Judgment of the Court Of Appeals entered on November 20, 2003
19. Denial of The Sur Petition for Rehearing to the Court Of Appeals entered on December 23, 2003

C. BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec.1254(1), to review Judgments, Orders, Opinions hereunder.

D. Opinions And Orders Presented For Review
Official/Unofficial report not available)

1. Denial of The Sur Petition for Rehearing to the Court Of Appeals entered on December 23, 2003

2. Opinion and Judgment of the Court Of Appeals entered on November 20, 2003.

3. Order of the District Court granting Defendant Trans Union Corporation, Summary Judgment and closing the case; entered in this action on the 19 day of June, 2002.

4. Opinion of the District Court entered on February 21, 2003.

5. Memorandum and order denying motion to relieve pltf. From judgment and Order entered on 6/19/02; denying motion for reconsideration of order. Filed 3/17/03

6. Memorandum and order denying motion for reconsideration of order granting motion for summary judgment in favor of deft. Filed 10/03/02

7. Notice of Appeal by plaintiff, filed 11/7/02.

8. Memorandum and order, denying motion to extend Time to file Notice of Appeal; filed 1/22/03

9. Judgment of USCA (certified copy) dismissing appeal for lack of jurisdiction; appeal no. 02-4153.

DS), filed 3/20/03

Submitted for review under 28 U.S.C. Sec.1254(1)

E. CONCISE STATEMENT OF THE CASE

The original complaint was filed to the United States District Court, District of New Jersey, pursuant to The Fair Credit Reporting Act, more specifically : 15 USC Sec. 1681 (g) and Sec. 1681n.
The original complaint was mailed on June 23, 2001 and filed on June 25, 2001 in The United States District Court; District of New Jersey.
Summary Judgment and closing the case was entered on the 19 day of June, 2002 in favor of Defendant/ Respondent, Trans Union Corporation.
The judgment of the Court Of Appeals, to affirm the District Court, was entered on November 20, 2003.
The petition for rehearing to the Court Of Appeals was denied and entered on December 23, 2003.

The basis for jurisdiction in the District Court of New Jersey was: failure to disclose to consumer upon request under 15 USC Sec. 1681 (g) and penalties under Sec. 1681(n).

F. REASONS FOR ALLOWING THE WRIT

In compliance with The United States Supreme Court Rule 10, the Petitioner submits the following contentions for allowing the writ:

(a) The United States Court of Appeals for The Third Circuit has decided an important question inconsistent with federal law (Fair Credit Reporting Act, failure to disclose to consumer), that has not been, but should be, settled by this Court.

(b) The United States Court of Appeals for The Third Circuit has entered a decision inconsistent with congressional statement of purpose embedded in the Fair Credit Reporting Act Sec. 1681 et. Seq. "*There is a need to insure that consumer reporting agencies exercise their grave responsibilities...*".

(c) The United States Court of Appeals for The Third Circuit and The District Court of New Jersey have contravened The United States Supreme Court's mailbox rule on two important issues.

Petitioner asserts:

(a) Congress has enacted the Fair Credit Reporting Act 15 USC §1681 et seq. primarily to protect consumers,

"Title 15 - Commerce And Trade
Chapter 41 - Consumer Credit ***Protection***
Subchapter III - Credit Reporting Agencies"

not to protect consumer reporting agencies such as Trans Union Corporation. Petitioner asserts as explained hereunder, that the District Court and the Third Circuit Court, by their decisions, not only failed to protect consumers but instead protected a consumer reporting agency, such as respondent Trans Union Corporation in deciding petitioner's claim for the failures to disclose to consumer upon request as required by USC 15§ 1681(g). The adjudication in this case is a plain forfeiture of consumer's right under The Act, contravenes the purpose of the Act, and can only be corrected in this particular case, by The United States Supreme Court, to prevent manifest injustice and future violations.

(b) The United States Court of Appeals for The Third Circuit has entered a decision in violation of constitutional due process, by affirming the decision of the District Court, and denying Petitioner, access to

evidence of mailing his credit report upon request or alternatively to establish the lack of any credible evidence.

> *United States V. Agurs, 427 U.S. 97 (1976)*
> *Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit*
> *Decided June 24, 1976*
> *(d) The proper standard of materiality of undisclosed evidence, and the standard applied by the trial judge in this case, is that if the omitted evidence creates a* ***reasonable doubt of guilt*** *that did not otherwise exist, constitutional error has been committed. Pp. 112-114.*

No proof of mailing consistent with any mailbox rule was submitted by Respondent in support of their contention, when requested.
Discovery requests for proof of mailing of consumer reports to Petitioner, when requested, were denied.

(c) The United States Court of Appeals for The Third Circuit decided an important federal question in a way that conflicts with relevant decisions of this Court and other United States court of appeals on the same important matter; that is proof of mailing under 15 USC Sec. 1681 (g).

(Petitioner submitted USPS Form 3817(certificate of mailing), to establish the exact date of mailing of his notice of appeal; the evidence was denied).
(Petitioner requested discovery orders to obtain from Respondent's third party mailer Lason, USPS Form 3877 or any equivalent to establish the alleged mailing of his credit reports on 3 occasions, the request was denied). Although the District Court subjected Petitioner to prove the negative on a mailing issue, access to evidence such as: mailing manifest, output of the sort

process, reports by clients, by zip or bar code were denied, creating an insurmountable burden.

Rosenthal V. Walker, Assignee.
111 U.S. 185; 1884
"The rule is well settled that if a letter properly directed ***is proved to have been either put into the post office or delivered to the postman,*** *it is presumed, from the known course of business in the post office department, that it reached its destination at the regular time, and was received by the person to whom it was addressed.....*

Campbell Et Al. V. United States
365 U.S. 85; 1961
The ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary.

see also

Sellers v. W.C.A.B.,713 A.2d 87 (Pa. Supreme Ct. 1998), the Pennsylvania Supreme Court held that a ***United States postmark will constitute sufficient evidence of the mailing date of an appeal.*** *The Court further held....* ***Only the postmark of the U.S. Post Office is evidence of timely filing.***

United States V. Wolfson, ***United States*** *District Court For The District Of Delaware 322 F. Supp. 798; 1971*
It is an established rule that ***when mail matter is properly addressed and deposited in the United [*813] States mails with postage duly prepaid*** *thereon, there is a rebuttable presumption of fact that it was received by the addressee. Citing; Columbian National Life Insurance Co. v. Rodgers, 93 F.2d 740, 742 (C.A. 10, 1937); Hagner v. United*

States, 285 U.S. 427, 430, 52 S. Ct. 417, 76 L. Ed. 861 (1932); Rosenthal v. Walker, 111 U.S. 185, 193, 4 S. Ct. 382, 28 L. Ed. 395 (1884)

(d) The United States Court of Appeals for The Third Circuit has decided an important federal question by affirming a decision of The District Court inconsistent with constitutional due process and departed from the accepted and usual course of judicial proceedings under the United States Constitution Fifth Amendment's 'due process of law' and 'the equal protection of the laws', on two controversies:

- Unsubstantiated allegations of: inaccurate reporting

AND

- Statutory right to third party reports

Third Circuit Court; Opinion page 3, line 2 (Appendix page 13) reads: " *Because* ***Boyadjian did not contest the report's accuracy****, on June 19, 2002, the District Court granted for Trans Union ....premised on inaccurate reporting .....it supplied to PNC Bank.....****generated on behalf of a third party***."; see Appendix pages, 11, 14, 26

These two claims: "inaccuracies" and "third party reports" do not exist and were not asserted by petitioner, furthermore the Court and the Respondent do not indicate where in the initial complaint, or a motion to add a complaint, such contentions or claims were submitted by petitioner.

RELEVANT PART FROM ORIGINAL COMPLAINT

"Pursuant to; 15 USC Sec. 1681 (g) and violations thereof by Defendant; The Plaintiff therefore demands judgment for relief pursuant to, Sec.

1681n. Civil liability for willful noncompliance, as follows .... :

Although Petitioner did not claim a right to third party consumer reports or violation under the Fair Credit Reporting Act, 15§ 1681(g), such a request was submitted under the discovery rules based on the failure to disclose his credit report when requested and presumption of guilt.

United States V. Agurs, 427 U.S. 97 (1976)
Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit
No. 75-491.
Argued April 28, 1976
Decided June 24, 1976
(d) The proper standard of materiality of undisclosed evidence, and the standard applied by the trial judge in this case, is ***that if the omitted evidence creates a reasonable doubt of guilt that did not otherwise exist, constitutional error has been committed****. p. 112-114.*

Joanna Pacitti, a minor, by Joseph Pacitti, and Stella Pacitti, her parents and guardians, Appellants v. Macy's; United States Court Of Appeals For The Third Circuit 193 F.3d 766; 1999 U.S. App. July15, 1999,Argued; October 5, 1999, Filed
The Federal Rules of Civil Procedure provide, in pertinent part:
Parties may obtain discovery regarding any [**29] matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . *The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*

We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." Cohens v. Virginia, 6 Wheat. 264, 404 (1821). "
United States Court Of Appeals For The Third Circuit 220..F.3d.127; 2000 U.S. App. November19,1999,Argued;July 26, 2000, Filed
I begin with the Supreme Court's admonition that ***abstention is the "exception and not the rule"*** *and that a federal court's obligation to adjudicate claims within its jurisdiction is* ***"virtually unflagging."*** *University of Md., 923 F.2d at 271, (quoting NOPSI, 491 U.S. 350 at 359). As the Supreme Court recently reiterated, federal courts have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be* ***treason*** *to the Constitution.*

Petitioner asserts: the United States District Court and Court of Appeals for The Third Circuit erred by not conclusively adjudicating a claim properly presented, that is, the right of a consumer to obtain his credit report upon request under USC 15.§1681 (g).

Relevant parts from District Court Opinions: *Dated: Feb. 15, 2002. (see Appendix page App. 8)*

*"**Defendant appears to have sent plaintiff** a copy of the entire file it had on plaintiff every time plaintiff requested."*

The District Court failed to indicate the standard of proof used to make such determination.

"Moreover, plaintiff's complaint is unclear as to which provision of the FCRA defendant TU allegedly violated. While plaintiff cites § 1681 g, that

provision makes no mention of a requirement that a credit reporting agency supply a consumer with a copy of his credit ***report previously given to a third party, like PNC.***

On February 12, 2001, Petitioner sent a certified letter, District Court Exhibit 3, advising Defendant, his intention to file a complaint if his credit report is not submitted within 20 days.
The letter of request does not make any reference to third party report or any sentence such as "as submitted to PNC bank".

"If plaintiff is in fact alleging that defendant TU's failure to provide him with ***the credit report TU furnished to PNC*** *is somehow violative of the provisions of FRCA,* ***plaintiff has failed to direct this Court's attention to which provisions were violated*** *or to establish the requisite level of proof required to trigger any violation.... For these reasons, plaintiff's motion for summary judgment will be denied. The Court will file an appropriate order."*

Petitioner did not assert a right to third party credit reports under USC 15 §1681 (e).
Petitioner directed the Court's attention when responding to the Memorandum and Order of the District Court entered on April 22, 2002, when petitioner submitted on May 18, 2002, the following letter of contentions.

"The Memorandum and Order of the Court entered on April 22, 2002, includes a citation from Defendant:
"According to defendant, plaintiff's sole contention in this litigation is that TUC failed to supply him with a copy of his credit report generated by TUC ***at the request of the PNC Bank...***"

> ***At no time plaintiff claimed a violation by Defendant TUC, for failure to supply a copy of his credit report generated by TUC at the request of the PNC Bank,*** *..... ....*
> *As of this writing only the following claims were asserted by plaintiff against TUC:*
> ***1) Plaintiff asserts that Defendant TUC has violated 15 USC Sec. 1681 (g) by not disclosing his credit report when requested on December 27, 2000.***
> *2) Plaintiff asserts that Defendant TUC has violated a second time 15 USC Sec. 1681 (g)* ***by not disclosing his credit report when requested on February 21, 2001,*** *by certified letter, Exhibit 3, advising Defendant TUC, his intention to file a complaint if his credit report is not submitted within 20 days......"*

In spite of Petitioner's directing the Court's attention as to the claim being asserted and the violations thereof, the District Court entered judgment for Respondent without apparent reason; this appears to be bias or prejudice and contravenes the primary objective of The Act.

Petitioner also contends that plain error on part of the District Court followed by the Circuit Court, regarding third party credit report requests, was greatly influenced by Respondent's misrepresentation of the case in violation of FRCP Rule 60 (b) (3) misrepresentation. Courts are not infallible and subject to errors, see for example:

> *"**We are far from infallible**.....Remarks by Chief Justice William H. Rehnquist ..... September 27, 2001 ,Mexico City"*

> *"If a precedent of [the Supreme] Court has direct application in a case.....* ***Court of Appeals should follow the case which directly controls,*** *leaving to*

[the Supreme] Court the prerogative of overruling its own decisions." Rodriguez de Quijas v. Shearson / American Express, 490 U.S. 477, 484 (1989)....."

"Brown v. Allen, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in judgment) ("We are not final because we are infallible, but we are infallible only because we are final.")

(e) The United States Court of Appeals for The Third Circuit has affirmed a decision of the District Court denying petitioner's Notice of Appeal as untimely, without consideration to any mailbox rules (see for example initial complaint filed within 2 days). The Court has arbitrarily excluded any possible error or mishandling in the clerk's office, mail service or other uncontrollable delays.

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DONALD CARSON Defendant-Appellant
Docket No. 94-6044
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
52 F.3d 1173; 1995
DISPOSITION: Affirmed in part, vacated in part, and remanded. n5 There is actually some dispute as to when the Clerk's office received the Notice of Appeal. ***The Notice is stamped January 7, 1994.*** *But the Carsons concede it was not mailed from New Jersey until January 7,* ***making the January 7 stamp an evident error.*** *A certified mail return receipt was stamped January 12, 1994. The district court found as a matter of fact that January 12 was the date the Notice was received by the Clerk's office. There is no reason to disturb this factual finding.*

Petitioner's Notice of Appeal was mailed on October 29, 2002, from Somerville, New Jersey, to The District

Court in Trenton, New Jersey, about 30 miles according to The United States Postal Services. The Notice was "untimely filed" on November 7, 2002, 9 calendar days and 8 postal days from the date of mailing. The United States Postal Services, Service Commitment statistics submitted to the Court indicate 1 to 50 miles delivery commitment of 1.8 days. By a letter dated November 20, 2002 and postmarked November 21, 2002, the Third Circuit Court advises that petitioner's Notice of Appeal was untimely filed and will be submitted for dismissal.

On December 9, 20002, Petitioner filed a motion to extend the time to file his Notice of Appeal; the motion was denied on January 22, 2003.

Relieve from judgment under Rule 60 (b) ; Inadvertence; Excusable Neglect; Newly, Etc. was also denied in spite of :

> *Pioneer Investment Services Company, Petitioner V. Brunswick Associates Limited Partnership Et Al.*
> *Supreme Court Of The United States*
> *507 U.S. 380;*
> *"and if a party is partly to blame for the delay, relief must be sought within 1 year under Rule 60(b)(1), and the party's neglect must be excusable."*

In response to Petitioner's request inquiring about the envelope used to mail his notice of appeal, by a letter of August 6, 2003, (District Court Exhibit A2) the District Court Clerk advises: "Please be advised, this Office does not have this envelope. .....we usually staple the envelope to the original pleading submitted by a pro se litigant, however since the Clerk's File is presently in the U.S. Court of Appeals in Philadelphia, **this Office can not tell you if this occurred in this instance.". The Third Circuit Court Clerk when inquired about the envelope, also advises that it does not have the envelope.**

Petitioner files a motion "TO CORRECT AND MODIFY THE RECORD ON APPEAL" on September 2, 2003, to introduce a substitute postmark, USPS Form 3817 Certificate of mailing, with the official readable postmark; the motion is denied. The timeliness of Petitioner's Notice of Appeal was therefore **decided without established date of mailing.**

Petitioner asserts that not to subject the timely filing of a Notice of Appeal to any mailbox rules including The United States Supreme Court and The Third Circuit Court, is inconsistent with constitutional due process. Furthermore, it is unjust; it will legitimate the infallibility of the District Court Clerk's Office and contravene United States Supreme Court precedents.

> *"If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the* ***Court of Appeals should follow the case which directly controls,*** *leaving to [the Supreme] Court the prerogative of overruling its own decisions." Rodriguez de Quijas v. Shearson / American Express, 490 U.S. 477, 484 (1989). The federal courts of appeals are neither final nor infallible,5 and our duty is more constrained than we might sometimes wish it to be."*
>
> *"We are far from infallible - but our mistakes are our own, and not imposed on us by Congress or the President.*
> *Remarks by Chief Justice William H. Rehnquist at the Faculty of Law of the University of Guanajuato, Mexico September 27, 2001"*
>
> *"Adopting the equivalent of the "mailbox" rule, we conclude that a demand made pursuant to section 546(c) is* ***effective on dispatch****"*
> *Marin Motor Oil Inc. v. Marin Motor Oil, Inc*

United States Court Of Appeals For The Third Circuit 740 F.2d 220; 1984

Chrysler Motors Corporation, Appellant v. JeromeSchneiderman
United States Court Of Appeals For The Third Circuit 940 F.2d 911; 1991
On this appeal Chrysler points out that the Supreme Court held in Hagner v. United States, 285 U.S. 427, 430, 52 S. Ct. 417, 419, 76 L. Ed. 861 (1932), "that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed" and it urges that we apply that presumption here.
..... Accordingly, inasmuch as the rebuttable presumption that the claim was received was not rebutted, the proof of claim, even if mislaid by the bankruptcy court, must be regarded as properly filed and we should accordingly reverse the district court.

Cendant Corporation Prides Litigation
United States District Court For The District Of New Jersey 157 F. Supp. 2d 376; 2001
*" (presumption arises only upon "proof that the item was properly addressed, had sufficient postage, and was deposited in the mail"); Robinson v. American Int'l Adjustment Co., Civ. A. No. 90-1270, 1990 WL 100309, *4 (D.N.J. Aug. 9, 1990) [**41] (receipt of notice is presumed only upon proof of mailing)".*

The Third Circuit Court legitimated the infallibility of the District Court Clerk's Office regarding Petitioner's Notice of Appeal disregarding United States v. Carson 53 f. 3d. 1173. The Petitioner in this case was advised by the Clerk's Office, United States Supreme Court, that his Petition for Certiorari was received at the clerk's office on March 23, 2004. The USPS has the original signed receipt dated March 22, 2004; (available).
This case contains 4 mailing controversies, that is: 2 related to disclosures under 15USC Sec. 1681; petitioner's notice of appeal filed 9 days after mailing; and his petition for certiorari filed 1 day after receipt. Irrespective of any mailbox rule, including:

Hagner et al. v. United States; 285 U.S. 427 and Rosenthal v. Walker, 111 U.S. 185

All mailing controversies were discriminately ruled against petitioner and can not be corrected without the assistance of The United States Supreme Court.

(f) The United States Court of Appeals for The Third Circuit has affirmed a decision of the District Court granting attorney fees to Respondent in violation of or inconsistent with USC 15 Sec. 1681n (a). Civil liability for willful noncompliance.

> *"(3) in the case of any **successful action to enforce any liability under this section**, the costs of the action together with reasonable attorney's fees as determined by the court."*

Petitioner asserts: the United States District Court and Court of Appeals for The Third Circuit erred or abused their discretion by granting attorney fees to Respondent contrary and inconsistent with USC 1681n (c).

To allow such an award to stand would have a chilling effect on consumer claims challenging violations of credit reporting practices in contravention of the purpose of the FCRA; in particular the pro-se, indigent

and elderly; additionally it will defeat the purpose of The Act.

> *Renie Guimond, Plaintiff-Appellant, v. Trans Union Defendant-Appellee. No. 93-15800*
> *United States Court Of Appeals For The Ninth Circuit*
> *45 F.3d 1329; 1995 U.S. App. October 7, 1994, Argued, Submitted, San Francisco, California January 19, 1995, Filed*
> *The FCRA provides that "in the case of any successful action* ***to enforce liability*** *under this section, the costs of the action together with reasonable attorneys' fees as determined by the court [will be awarded]." 15 U.S.C. §§ 1681n(3) and 1681o(2).* ***Thus, under FCRA, only plaintiffs are entitled to [**20] recover attorneys' fees.***

CONCLUSION

The determinations of this case by the District Court of New Jersey and The Third Circuit Court, as perceived by petitioner, are a disservice to the intent of The United States Congress.

The Fair Credit Reporting Act Sec. 1681 et. Seq. has been drafted to protect consumers. The judgment in this case, did not protect the right of consumers to obtain their credit report upon request, under The Act. The decision in this case, has forfeited the right of consumers and additionally contravened the United States Supreme Court's mailbox rule and any known mailbox rules, regarding disclosures under The Act.

Affirmation of these decisions will allow consumer credit organizations to violate at will an Act of Congress, as no deterrent will be operative; furthermore, it may discourage consumers to request their credit reports.

The District Court concluded *"it appeared that Trans Union sent Boyadjian a copy of the entire file it had on*

him every time he requested his report"; the conclusion of the District Court in this instance, is plain error and *prejudicial. To disprove* this conclusion would require a lookup at the records, as Respondent recognized, rightfully, not to honor the initial request for disclosure on the basis of address verification.

As for the second and third requests for disclosure of petitioner's credit reports, the District Court of New Jersey and The Third Circuit Court have determined by their decisions, that credit reporting agencies are not subject to any proof of mailing consistent with any mailbox rules or Federal Rules of Evidence. Access to third party mailer Lason either for testimony or evidence or subpoenas to obtain proof of proper mailing or disprove mailing, was denied. As a last attempt for evidence of mailing, petitioner requested thru a motion, access to Respondent's third party mailer Lason' mailing manifest from the United States Postal Services (retention 2 years), the motion was denied. The District Court of New Jersey and The Third Circuit Court have made the burden of proving the negative on a mailing controversy an impossible task and a miscarriage of justice as perceived by petitioner and in accordance with case law.

The District Court of New Jersey and The Third Circuit Court have determined by their decisions, that court clerk offices are infallible and not subject to any mailbox rules. This is evidenced by the untimely filing of Petitioner's Notice Of Appeal, nine (9) days from the date of mailing; (compare with petitioner's initial complaint, mailed on June 23, 2001 and filed on June 25, 2001, from the same origin post office to the same destination post office).

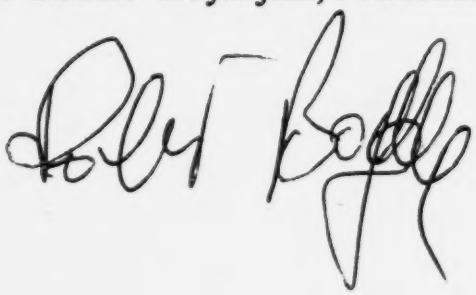
Under the common law mailbox rule, proper and timely mailing of a document raises a rebuttable presumption that it is received by the addressee in the normal course of the postal services; *Rosenthal v. Walker,* 111 U.S. 185, (1884). In this case, the District Court has not rebutted this presumption regarding petitioner's Notice

of Appeal filed 9 days from the date of the postmark, except by losing or misplacing the envelope bearing the postmark and denying to petitioner the submission of a USPS Certificate of Mailing bearing the Postmark with a date of October 29, 2002. By denying petitioner the benefit of the Supreme Court mailbox rule, the District Court and the Third Circuit Court have contravened the rule expressed in Rodriguez de Quijas v. Shearson / American Express, 490 U.S. 477, 484 (1989) "***Court of Appeals should follow the case which directly controls,*** *leaving to [the Supreme] Court the prerogative of overruling its own decisions".*

Petitioner is aware that oral argument is rarely granted. Nevertheless, Petitioner will welcome the opportunity and honor to an oral argument of a maximum of 10 minutes, to further convince The Court, to the best of his ability, that in this instance, a miscarriage of justice has occurred on several issues affecting the rights of all consumers.

For the foregoing, Petitioner strongly believes:
His Petition for Certiorari should be granted.

Respectfully submitted: Robert Boyadjian, Petitioner



June 8 , 2004

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-1921

ROBERT BOYADJIAN, Appellant
v.
TRANS UNION CORPORATION
SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, and CHERTOFF, Circuit Judges

The petition for rehearing filed by Appellant Robert Boyadjian in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

/s/ Dolores K. Sloviter
Circuit Judge

Dated: December 23, 2003

CRG/cc: RB
TPC
MEK
BSL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
NO. 03-1921
ROBERT BOYADJIAN, Appellant
v.

TRANS UNION CORPORATION
On Appeal From the United States District Court For the District of New Jersey (D.C. Civ. No. 01-cv-03023)
District Judge: Honorable Anne E. Thompson

Submitted Under Third Circuit LAR 34.1 (a) November 20, 2003

Before: SLOVITER, NYGAARD and CHERTOFF, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the District Court entered on March 17, 2003 be, and the same is, hereby affirmed in part. Costs taxed against the Appellant. All of the above in accordance with the opinion of this court.

ATTEST: /s Marcia M. Waldrom Clerk

DATED: November 20, 2003

Certified as a true copy and issued in lieu of a formal mandate on December 31, 2003

Teste: /s Marcia M. Waldrom

Clerk, U.S. Court of Appeals for the Third Circuit.

FILED
Not for Publication
UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY
FEB 2 1 2002 AT 8:30

WILLIAM T. WALSH CLERK

ROBERT BOYADJIAN, Civil No. 01-3023 (AET)

Plaintiffs,

v..

TRANS UNION CORPORATION, et. al.

Defendants.

OPINION___THOMPSON, U.S.D.J.

This matter is before the Court on motion by the Plaintiff for summary judgment pursuant to Fed.R.Civ.P. 56. The Court has decided this motion without oral argument pursuant to Fed.R.Civ.P. 78. For the following reasons, the motion for summary judgment will be denied.

Plaintiff, proceeding pro se, filed his complaint with the Court seeking damages from Trans Union Corporation (TU) for its alleged violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et. sec .., (the "FCRA"). In the complaint, plaintiff asserts that on November 15, 2000, he applied for a personal loan in the amount of $24,000 at the PNC Bank. On November 24, 2000, plaintiff was denied a personal loan in the amount requested because the ratio of his monthly payment obligations to his monthly income exceeded the credit application guidelines. The loan was denied by PNC Bank based on credit information about plaintiff from TU, a consumer reporting agency under the FCRA. See 15 U.S.C. § 1681 a(f). Plaintiff asserts that at that time he had a personal income of greater than $60,000. In his complaint, plaintiff states, at the time of his loan denial, he maintained several accounts with PNC Bank, including a mortgage.

In its letter of denial, dated November 24, 2000, PNC Bank indicated that plaintiff could receive the loan subject to a collateral. At that time plaintiff's mortgage was due for renewal and the objective of the loan plus his securities portfolio was to reduce the amount of the newly negotiated mortgage with PNC Bank. After negotiations, plaintiff, using his securities as collateral, was granted the loan for the requested amount of $24,000 from PNC. However, because plaintiff had to use his securities as collateral, those securities used as collateral could not be traded. Plaintiff claims damages of the full loss of value of these securities from the time the loan was granted ($68.75 per share) until the filing of his complaint ($52.625 per share) on June 25, 2001.

Plaintiff also alleges that TU failed to supply him with a copy of plaintiff s credit report generated by TU at the request of PNC Bank. Plaintiff claims this failure on the part of TU was violative of FCRA. Plaintiff now moves for summary judgment[2] He seeks an order from this Court granting him: (1) compensatory relief in the amount of $11.375.00, representing the loss in value of his securities portfolio; (2) punitive damages in the amount of $150,000.00 representing

[1] The content of plaintiff's securities portfolio at times relevant to plaintiffs complaint is not known,

[2] Plaintiff has apparently twice moved for summary judgment. Because the motions seek the same relief, the Court will treat the motions as one motion for summary judgment.

the value of his mortgage allegedly jeopardized by TU's initial loan denial and subsequent requirement that he collateralize his securities; and (3) attorney's fees and costs of suit.

DISCUSSION

A court may enter summary judgment if there is no genuine issue as to any material fact and the moving

party is entitled to judgment as a matter of law. FED. R. Civ. P. 56; Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Rule 56 requires the moving party, to make a prima facie showing to that effect. See Celotex, 477 U.S. at 331 (Brennan, J. dissenting). Where the moving party will carry the burden of persuasion at trial, that party must support its prima facie showing with "credible evidence" using the materials listed in Rule 56(c). See id.

Once the moving party has satisfied this initial burden, the opposing party must establish that a genuine issue exists. Jersey Central Power & Light Co. v. Lacey Township, 772 F.2d 1103, 1109 (3d Cir. 1985), cert. denied, 475 U.S. 1013 (1986). Not every issue of fact will be sufficient to defeat a motion for summary judgment; issues of fact are genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Further, the opposing party cannot rest upon mere allegations; it must present actual evidence that creates a genuine issue of material fact. Id. at 249 (citing First Nat'l Bank of Arizona v. Cities Service Co., 391 U.S. 253, 290 (1968)). The court must draw all reasonable inferences in the opposing party's favor, and must accept that party's evidence when considering the merits of the summary judgment motion. See Pollock v. American Tel. & Tel. Long Lines, 794 F.2d 860, 864 (3d Cir. 1986).

In deciding a motion for summary judgment, it is not the court's role to make findings of fact, but to analyze the facts presented and determine if a reasonable jury could return a verdict for the nonmoving party. See Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 136; 1 (3d Cir. 1992), cert. denied, 113 S. Ct. 1262 (1993). It is in this light that the Court must analyze the facts of this case.

The facts of this case, which are largely disputed, are as follows: On December 5, 2000, plaintiff, tit the

alleged suggestion of PNC, wrote to defendant TU requesting a copy of his credit report from TU. On December 8, 2000, plaintiff received a letter from TU indicating that additional information was required prior to release of the his file. Plaintiff alleges he never received a loopy of his credit report. Conversely, defendant TU contends it sent plaintiff a full disclosure of his file on December 27, 2000. On February 12, 2001, plaintiff sent a letter to TU advising it of his intention to file a complaint for TU's violation of FRCA if he did not receive a copy of his credit report or the reasons why TU chose to withhold such information. On February 20, 2001, TU received plaintiff s letter which TU construed as a request for a file disclosure. TU sent plaintiff a copy of his file on February 21, 2001. On June 27, 2001 TU received a letter dated June 25, 2001 which the Court has construed as a complaint alleging that TU's failure to provide plaintiff with a copy of his credit report violates the FRCA. TU contends that on June 29, 2001, it again provided plaintiff with a copy of his file.

Plaintiff contends TU's failure to provide him at any time with a copy of his credit report is a violation of 15 U.S.C. §I681g(a)(1), which states:
Every consumer reporting agency shall, upon request, and subject to section 1681 h(a)(1)[3] of this title, clearly and accurately disclose to the consumer:

[3] 15 U.S.C. §1681h(a)(1) details the proper identification the consumer must provide to the consumer reporting agency before it must make its discloses to consumer under § 1681g of Title 15.

1) All information in the consumer's file at the time of the request, except that nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

[15 U.S.C. 1681g(a)(1).]

Defendant TU, on the other hand, contends it honored on more than one occasion plaintiff's request to receive his disclosure file. According to TU, the disclosure files sent to plaintiff did not contain any credit report because such a document was not in the possession, custody, or control of TU at any time plaintiff requested it.[4] Defendant TU contends its failure to provide plaintiff with a copy of his credit report furnished **to PNC Bank did not in any way violate** the provisions of FRCA because FRCA does not require that the consumer reporting agencies retain or disclose to consumers copies of consumer reports furnished to third parties, like PNC. See § 1681 g. According to TU, it is only required to have provided plaintiff with information in the consumer's file at the time of his request.

Because nothing in plaintiff's complaint alleged that any information which TU reported to PNC **was inaccurate**, plaintiff's June 25, 2001 complaint appears best construed as a dispute governed by 16 U.S.C. §1681i. In relevant part, it states:

If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer. [16 U.S.C. §1681i(a)(1)(A).]

Defendant appears to have sent plaintiff a copy of

4 This Court, believing that such a document might be obtained from PNC Bank, issued, on December 10, 2001, a subpoena duces tecum directed to PNC Bank.

the entire file it had on plaintiff every time plaintiff requested. Moreover, plaintiff s complaint is unclear as to which provision of the FCRA defendant TU allegedly violated. While plaintiff cites § 1681 g, that provision makes no mention of a requirement that a credit reporting agency supply a consumer with a copy of his credit report previously given to a third party, like PNC. If plaintiff is in fact alleging that defendant TU's failure to provide him with the credit report TU furnished to PNC is somehow violative of the provisions of FRCA, **plaintiff has failed to direct this Court's attention to which provisions were violated or to establish the requisite level of proof required to trigger any violation**. The Court also notes that it remains unclear whether TU's practice of not retaining copies of a consumer's credit report furnished to third parties could be construed as violative of FRCA's requirement that the consumer reporting agency be prepared to make available to a consumer the information that agency used in preparing the consumer's credit report in the event a consumer brings suit against a consumer reporting agency, as has been done in the case at bar. See e.g. 15 U.S.C. §1681g(a)(2); see also §§1681j(b) and 1681(n). For these reasons, plaintiff's motion for summary judgment will be denied. The Court will file an appropriate order.

Dated: *Feb. 15,* 2002

Not for Publication

ENTERED ON DOCKET JUN 19 2002

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROBERT BOYADJIAN,
Civil No. 01-3023 (AET)

Plaintiffs,

v. Memorandum and Order

TRANS UNION CORPORATION,

Defendant

THOMPSON, U.S.D.J.

In a memorandum and order filed on April 22, 2002, this Court, among other things, denied the motion of defendant Trans Union (TU) for summary judgment pursuant to Fed. R. Civ. P. 56. However, in that memorandum and order, this Court ordered that TU use its best efforts to obtain and provide plaintiff and the Court with a copy of plaintiff's credit report (regarding loan application #008669423) that resulted in the initial denial by PNC of plaintiff's loan application in November 2000; that such a credit report, if found, be served on plaintiff and the Court, via regular mail, within thirty (30) days of the entrance of that April 22, 2002 memorandum and order; that, within forty-five (45) days from the entrance of April 22, 2002 memorandum and order, plaintiff and TU could each submit a letter, of not more than two pages, addressing their respective contentions as to the report's accuracy at the time it was generated; and that plaintiff be granted forty-five (45) days from the entrance of that April 22, 2002 memorandum to amend his complaint. The Court now re-addresses defendant TU's motion for summary judgment [Docket #25] and will grant that motion for the following reasons.

The Court is in receipt of a letter from TU dated May 10, 2002, whereby TU supplied the Court and plaintiff with a copy of the consumer report it contends to have furnished to PNC on November 15, 2000, in connection with plaintiff's loan application.

From TU's submissions, it now appears that the PNC loan was denied as a result of TU reporting to PNC an accurate debt history of plaintiff, a credit history which indicated to PNC that plaintiff's debt ratio was above the bank's guidelines for awarding loans. In rebuttal, plaintiff has submitted a correspondence dated May 18, 2002. **While there might remain a factual dispute as to whether TU, or its agent, Larson, Inc., sent plaintiff a copy of his credit report on December 27, 2000, or in February 2001**, plaintiffs' May 18, 2002 submissions **do not rebut TU's contentions as to the accuracy** of the report it generated with regard to the PNC loan plaintiff sought. Because plaintiff has not brought forth evidence in either his May 18, 2002 submissions or the submissions accompanying his previously filed motion to supplement the pleadings pursuant to Fed. R. Civ. P. 15(d) to **suggest that TU either was inaccurate in its credit reporting or failed to disclose** to him all reports in his TU file at the times he requested', the Court now rules that plaintiff is unable to substantiate a cause of action under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq., against TU premised on **inaccurate reporting'**, or any **failure by TU to disclose** to plaintiff the credit information **it supplied to PNC Bank**. Moreover, plaintiff cannot sustain a cause of action against a consumer reporting agency, like TU, for failure to timely present a requesting party, like

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[1] see 15 U.S.C. §1681 g

[1] see 15 U.S.C. §§ 1681(e)(b), 1681(n), 1681 (o)

plaintiff here, with a copy of the credit report generated by that credit reporting agency **on behalf of a third party**, such as PNC Bank in the case at bar.

Accordingly, for the aforementioned reasons, and for good cause shown; IT IS on this 17th day of June 2002

ORDERED that the Clerk of the Court is to file the attached letters from plaintiff and defendant and the accompanying documentation as part of the judicial record;

ORDERED that these accompanying documents need not be submitted to the parties as part of this memorandum and order;

ORDERED that defendant's prior motion for summary judgment [Docket Entry #25] seeking dismissal of plaintiff's complaint with prejudice is GRANTED; and it is further ORDERED that the case is hereby CLOSED.

s/ Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 03-1921

ROBERT BOYADJIAN, Appellant

v.

TRANS UNION CORPORATION

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civ. No. 01-cv-3023)
District Judge: Honorable Anne E. Thompson

Submitted Under Third Circuit LAR 34.1 (a) November 20, 2003

Before: SLOVITER, NYGAARD and CHERTOFF, Circuit Judges

(Filed: November 20, 2003)

OPINION

PER CURIAM

In June 2001, Appellant Robert Boyadjian, proceeding pro se, filed a complaint in the United States District Court for the District of New Jersey against Trans Union Corporation alleging a violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. Boyadjian asserts that he applied for a loan at PNC Bank which was denied because the ratio of his monthly payment obligations to his monthly income exceeded the bank's guidelines. The bank's credit decision was based upon information it received from Trans Union. Boyadjian alleges that he requested a copy of his credit report from Trans Union at the suggestion of PNC Bank and Trans Union failed to provide it. Boyadjian ultimately received the loan by providing his securities portfolio as collateral. Because he could not trade these securities, Boyadjian claims damages of the loss in value of the securities from the time the loan was granted until the filing of his complaint.

Trans Union moved for summary judgment and argued that Boyadjian did not suffer any harm as a result of its alleged failure to provide him a copy of his credit report because PNC's decision to deny his loan application unless he provided collateral is not connected to the fact that Boyadjian did not receive the credit report. The District Court denied Trans Union's

motion for summary judgment because it found a suggestion in Boyadjian's filings that Trans Union reported inaccurate credit information to PNC Bank which resulted in the bank's requirement that he provide collateral for the loan. Because an allegation of inaccurate reporting might support liability under the Fair Credit Reporting Act, the District Court ordered that Trans Union use its best efforts to obtain a copy of the credit report prepared for PNC Bank and directed the parties to address the report's accuracy if found.

Trans Union provided Boyadjian and the District Court a copy of the report. The District Court found that it appeared that the PNC loan was denied as a result of Trans Union reporting an accurate debt history of Boyadjian. **Because Boyadjian did not contest the report's accuracy, on June 19, 2002, the District Court granted summary judgment for Trans Union, explaining that Boyadjian is unable to substantiate a cause of action under the Fair Credit Reporting Act premised on inaccurate reporting, a failure to disclose the credit information it supplied to the bank, or a failure to timely present a requesting party with a copy of a credit report generated on behalf of a third party.**

Boyadjian filed a motion for reconsideration of the order granting summary judgment which the District Court denied. Boyadjian filed an appeal which this court dismissed for lack of jurisdiction because the appeal was untimely. Before this court dismissed the appeal, Boyadjian moved the District Court to extend the time to file an appeal. The District Court denied the motion in an order entered January 24, 2003 because Boyadjian did not file it within the time requirements of Federal Rule of Appellate Procedure 4(a)(5) or 4(a)(6).

On February 11, 2003, Boyadjian filed a motion for relief from the judgment and order entered on June 19, 2002 pursuant to Federal Rules of Civil Procedure Rule 60(b)(1) and (3), and a motion to reconsider the order entered on January 24, 2003 denying an extension of

time to file a notice of appeal. The District Court denied the motions on March 17, 2003. Boyadjian filed the present appeal on March 31, 2003. Trans Union has moved to dismiss the appeal because it is untimely filed. We agree that the appeal of the District Court's order denying the motion to extend the time to file an appeal is untimely. Boyadjian filed his motion for reconsideration of that order more than ten days after the District Court's January 24 denial and thus the time to appeal was not tolled. See Smith v. Evans, 853 F.2d 155, 157-58 (3d Cir. 1988). The appeal filed on March 31 was filed more than thirty days after the entry of the January 24 order. Because the appeal is untimely, see Fed. R. App. P. 4(a)(1), we lack jurisdiction to consider it. We thus grant in part Trans Union's motion to dismiss the appeal.

We have jurisdiction, however, to review the District Court's denial of Boyadjian's motion for relief from the judgment and order entered on June 19, 2002 pursuant to Rule 60(b). Although we question whether Boyadjian's motion was filed within a "reasonable time" as required by Rule 60(b), the District Court denied the motion on the merits and we will thus review its ruling on appeal.

In his brief, Boyadjian argues that the District Court erred because he did not assert a cause of action under the Fair Credit Reporting Act against Trans Union premised on inaccurate reporting, a failure by Trans Union to disclose to him the credit information

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[1] Boyadjian has filed a document titled "Informal Briefs" which is construed as a Motion to Correct or Modify Record pursuant to Federal Rule of Appellate Procedure 10(e). Boyadjian seeks to submit evidence to establish the exact date of mailing his notice of appeal of the order granting summary judgment. Because this motion appears to be related to the appeal of the order denying his motion for an extension of time to file an appeal and we lack jurisdiction to review this order, the motion is

denied. We also note that Boyadjian has filed a Rule 28(j) letter that appears to relate to the appeal of this order.

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it supplied to the bank or a failure to timely present him a copy of the credit report that it generated on behalf of the bank. Boyadjian contends that the District Court did not address the only claim in his complaint - that Trans Union failed to disclose his credit report to him when he requested it on two separate instances as required by the Fair Credit Reporting Act, 15 U.S.C. § 1681 g. Boyadjian states that he sought damages for Trans Union's willful noncompliance pursuant to 15 U.S.C. § 1681n.

Although Boyadjian argues that his claim was simply that Trans Union did not provide his credit report in response to his requests, not that it did not provide the report generated for the bank, he has not shown that the District Court's ruling on the issue as he presents it would be different. Boyadjian claims actual damages equal to the loss in value of his securities portfolio. However, as argued by Trans Union, PNC's decision to deny his loan application unless he provided collateral is not connected to the fact that Boyadjian did not receive the credit report. As recognized by the District Court, Trans Union may only be liable for such a loss if it provided an inaccurate or incomplete report which caused the bank to require the collateral. Finally, in denying Boyadjian's motion for summary judgment, the District Court concluded that it appeared that Trans Union sent Boyadjian a copy of the entire file it had on him every time he requested his report. The District Court did not abuse its discretion in denying the motion for relief pursuant to Rule 60(b). See Bethel v. McAllister Brothers. Inc., 81 F.3d 376, 384 (3d Cir. 1996) (setting forth standard.of.review). Accordingly, we will affirm in part the order of the

District Court. Boyadjian's motion for oral argument is denied.

EXTRACT FROM PETITIONER'S ORIGINAL COMPLAINT

June 23, 2001

JURISDICTION

This complaint is submitted to the United States District Court for judgment pursuant to:

1. 15 USC Sec. 1681 et. seq.

and

2. The Federal Fair Credit Reporting Act

INFORMAL BRIEFS

The plaintiff claims:

On November 15, 2000, he applied for a personal loan in the amount of $24,000.00, at PNC Bank, where he maintains several accounts for over fifteen years, including home mortgage.

On November 24, 2000, PNC Bank advises that his loan application was denied due to:

> "THE RATIO OF YOUR MONTHLY PAYMENT OBLIGATIONS TO YOUR MONTHLY INCOME EXCEEDS OUR GUIDELINES"

see Exhibit 1, letter from PNC Bank, dated November 24 2000.

Plaintiff's federal income tax Form 1040 for year 2000, reported a personal income greater than $60,000.

PNC Bank in his letter of denial indicated that the loan may be granted subject to a collateral.

His mortgage was due to renewal and the objective of the loan plus his securities portfolio was to reduce the amount of the newly negotiated mortgage with the same bank (PNC Bank).

After negotiations, PNC Bank accepted plaintiff's securities portfolio as collateral and approved a newly negotiated loan for the same amount.

The result of the transaction including the denial of the first loan application, was the inability to access his securities and trading (value at the time $68.875 per share).
(value as of this filing $52.625 per share).
Pursuant to 15 USC Sec. 1681 (g), and suggested by PNC Bank, on December 5, 2000, he wrote a letter to Defendants, requesting a copy of **his credit report**.

On December 8, 2000, he received a letter from Defendant, Exhibits 2a and 2b, indicating that additional information was required prior to releasing the credit report, a Form was included (2b).
On December 21, 2000, the form (2b) was completed, his signature notarized by the Somerset County notary, and sent to Defendants.
A copy of his credit report was never received from Defendant, and no explanation ever communicated.
On February 12, 2001, he sent a certified letter, Exhibit 3, advising Defendant, his intention to file a complaint if **his credit report** is not submitted within 20 days.
Pursuant to; 15 USC Sec. 1681 (g) and violations thereof by Defendant;
The Plaintiff therefore demands judgment for relief pursuant to, Sec. 1681n. Civil liability for willful noncompliance, as follows:

(a) A compensatory relief, in the amount of $11,375.00, representing the loss in the value of his securities portfolio.
(b) Punitive damages in the amount of $150,000.00 representing the value of his mortgage jeopardized by the unlawful action of Defendant.

Attorney fees and Costs of suit.

s/ Robert Boyadjian

Robert Boyadjian - Plaintiff pro se

Robert Boyadjian **INFORMAL BRIEFS File No.** 03-1921
Boyadjian December 2, 2003
-vs- **Motion for Rehearing**
Trans Union Corporation, Et Al

Boyadjian asserts the following in response to the decision of The Court of Appeals filed on November 20, 2003:

Court of Appeals Opinion page 2, reads: "The District Court denied Trans Union's motion for summary judgment because it found a suggestion in Boyadjian's filing that Trans Union reported inaccurate credit information to PNC Bank...."; Boyadjian did not make such suggestion, Boyadjian requested the disclosure to ensure that the denial of his own credit report after 3 consecutive requests from Trans Union is not the result of inaccuracies. This request was not made as a statutory right and no additional claim was made.

Although the requested credit report disclosure was not as of right Boyadjian should be entitled to explore additional violations under the discovery rules, in particular when disclosure is denied on 3 occasions.

> *Our standard of review of the district court's legal rulings is plenary. E.g., Creque v. Luis, 803 F.2d 92, 93 (3d Cir. 1986). The district court's denial of discovery is reviewable for abuse of discretion. Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986).*
>
> *SEC v. Sargent, 229 F.3d 68, 80 (1st Cir. 2000)("The Supreme Court has long recognized that the Federal Rules of Civil Procedure are to be construed liberally in favor of discovery."); Titan Sports, Inc. v. Turner Broad. Sys., 151 F.3d. 125,128 (3d Cir. 1998) ("Indeed, the Supreme Court has not shown enthusiasm for the creation of constitutional privileges because [they] `contravene [the] fundamental principle . .*

. that the public has aright to every man's evidence.' . . . Pretrial discovery is therefore, `accorded a broad and liberal treatment.'");
FRANCIS J. McQUEENEY, Appellee v. WILMINGTON TRUST COMPANY, Trustee, and ANNDEP
STEAMSHIP CORPORATION, Appellants
No. 84-1640
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
779 F.2d 916; 1985 U.S. App.; 19 Fed. R. Evid. Serv. (Callaghan)
673; 84 A.L.R. Fed. 1; 1986 AMC 969
On Appeal from the United States District of Pennsylvania (D.C. Civ. No.
82-2534).
COUNSEL: Marvin I. Barish (Argued), Philadelphia, Pennsylvania, for Appellee.
William G. Downey (Argued), Clark, Ladner, Fortenbaugh & Young, Philadelphia,
Pennsylvania, for Appellants.
JUDGES: Seitz, Becker, and Rosenn, Circuit Judges.
OPINIONBY: BECKER
*OPINION: [*917] OPINION OF THE COURT*
BECKER, Circuit Judge.
The first, arising under Fed. R.
Evid. 401 and 403, is whether evidence from which it might be inferred that McQueeney has suborned perjury of a proffered witness is admissible as substantive evidence that his claim is unfounded even though the witness never testified. The second, arising under Fed. R. Evid. 901 et seq., is whether McQueeney's Sea Service Records which bore significantly on his damage claim
were sufficiently authenticated by circumstantial evidence without the testimony of a witness. The

*district court excluded the evidence of subornation of perjuryand the [**2] Sea Service Records, but we conclude that it erred.*

*Having reached these conclusions, we are confronted with the third evidentiary question of this case, which arises under Fed. R. Evid. 103(a): what standard of review should a court use in analyzing claims of nonconstitutional harmless error in civil suits? We hold that a court can find that such errors are harmless only if it is highly probable that the errors did not affect the outcome of the case. Applying that standard to the facts here, we find that the errors of the trial court in this case were [*918] not harmless. Hence we reverse its judgment and remand for a new trial. n1*

Court of Appeals Opinion page 3, line 2 (Appendix page 13) reads: " Because Boyadjian did not contest the report's accuracy, on June 19, 2002, the District Court granted for Trans Union ....premised on inaccurate reporting .....it supplied to PNC Bank.....generated on behalf of a third party."

All these contentions of The District Court and the basis of The Circuit Court's decision are totally inaccurate and amount to miscarriage of justice for the following reasons: Boyadjian did not assert any of these claims and none are included in the initial complaint. Only one motion was submitted to add a claim for an additional party based on PNC's record custodian's own sworn affidavit and self incrimination regarding the statutory file retention of consumer reports.

Although The District Court adjudicated a claim that did not exist, it failed to adjudicate the only claim properly presented, furthermore, The Circuit Court also failed to recognize the unresolved claim.

The District Court did not adjudicate a properly asserted claim, nevertheless it did recognize it; on its Judgment of June 19, 2002, page 2, line 9 reads: "While there might remain a factual dispute as to whether TU, or its agent, Larson, Inc. sent plaintiff a copy of his credit report on December 27, 2000 or in February….".

Court of Appeals Opinion page 3, line 9 reads: " Boyadjian filed an appeal…. ……. ……..the appeal was untimely:
Boyadjian asserts: the denial of the appeal as untimely was an abuse of discretion for several reasons:
Federal Court Rules do not specifically define filing, therefore the determination as to timeliness of filing rests exclusively with the Court Clerk's office.
Boyadjian requested the Court in its motion to reconsider, the introduction of the postmark on the envelope containing the notice of appeal; no response was received by the Court or the Clerk.
Boyadjian did assume acceptance of his motion.
Subsequently, but too late the Clerk's Office advises that the envelope can not be found and suggests Boyadjian to contact The Court of Appeals Clerk.
The Court of Appeals Clerk's Office advises that the envelope is not in their custody.
Boyadjian submits by motion with the District Court a substitute proof of mailing, to be introduced as a proof of mailing 9 days prior to the "filed date" of his appeal, USPS Form 3817 Certificate of mailing, with the official readable postmark; the motion is denied.

ROSENTHAL v. WALKER, 111 U.S. 185; 4 S. Ct. 382; 28 L. Ed. 395; 1884
"The rule is well settled that if a letter properly directed is proved to have been either put into the post office or delivered to the postman, it is presumed, from the known course of business in the post office department, that it reached its destination

at the regular time, and was received by the person to whom it was addressed."

Hagner et al. v. United States; 285 U.S. 427; 52 S. Ct. 417; 76 L. Ed. 861; 1932
"Proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed; and such presumption exists even where the receipt of the letter subjects the person sending it to a penalty."

UNITED STATES v. BOWEN, Jr., Appellant
United States Court of Appeals for the Third Circuit; 414 F.2d 1268; 1969
"The court in DeNarvaez relied on United States v. Davis, supra, and Hagner v. United States, 285 U.S. 427, 52 S. Ct. 417, 76 L. Ed. 861 (1932). Hagner, following Rosenthal v. Walker, note 17 infra, articulated the rebuttable presumption rule that a letter properly mailed was actually received by the person to whom it was addressed and that the burden is on the addressee to show the contrary. 285 U.S. at 430-431, 52 S. Ct. 417."

In Sellers v. W.C.A.B.,713 A.2d 87 (Pa. Supreme Ct. 1998), the Pennsylvania Supreme Court held that a United States postmark will constitute sufficient evidence of the mailing date of an appeal. The Court further held that timely filing by mail cannot be established by an office postage meter postmark. Only the postmark of the U.S. Post Office is evidence of timely filing. Otherwise, the Bureau or Board's stamp, showing the date of receipt, controls. This is even when the date of receipt clearly supports the contended date of mailing. Getting a timely and official postmark doesn't always solve the problem created by this "special" mailbox rule that applies in administrative proceedings. As you may imagine,

there are times when the Board, or Bureau or the Court doesn't get or cannot find the document in question so there is neither a postmark nor a time stamp to show timely filing. You solve this problem by using the U.S. Post Office USPS Certificate of Mailing Form 3817 which you should staple to your copy of the document for use as proof of mailing in that situation. This is actually better insurance against the: "We never got it." problem than hand delivery. So far, there hasn't been a case setting forth what would be sufficient or insufficient proof of hand delivery.

UNITED STATES OF AMERICA v. EUGENE HANNIGAN, Appellant
27 F.3d 890; 1994 U.S. App.
*PRIOR HISTORY: [**1] On Appeal from the United States District Court for the Eastern District of Pennsylvania.*
JUDGES: Before: BECKER, HUTCHINSON and COWEN, Circuit Judges.
OPINION OF THE COURT
COWEN, Circuit Judge.
CONCURBY: BECKER
CONCUR:
BECKER, Circuit Judge, concurring in the judgment.
I concur in the judgment for the reason that, having failed to adduce any evidence of a mailing, the government did not meet its burden of proving that a mailing occurred by any standard of proof.

Court of Appeals Opinion page 2, last line reads: " Trans Union provided Boyadjian and the District Court a copy of the report". What is not considered by The Court of Appeals determination is the fact that The District Court failed to indicate the basis of this determination, and the particulars of the disclosure. Initially, PNC Bank's records custodian submitted an

Affidavit under oath indicating that PNC Bank's records retention for denied loans is 3 months, subsequently PNC Bank's paralegal submitted a letter indicating that the records custodian made a mistake and that the report was available. This creates a questionable issue as to the admissibility of the evidence. Nevertheless Boyadjian did not contest the accuracy of the report.

The District Court incorrectly decided the facts of this case for the following reasons:
Robert Boyadjian claims: the District Court erred by granting Defendant Trans Union Corporation, Summary Judgment and closing the case entered in this action on the 19 day of June, 2002 on the basis of: (see Appendix page 27)
Page 2 line 16 of Order "....the Court now rules that plaintiff is unable to substantiate a cause of action under the Fair Credit Reporting Act, 15 U.S.C. §1681 et. seq., against TU premised on inaccurate reporting , or any failure by TU to disclose to plaintiff the credit information it supplied to PNC Bank. Moreover, plaintiff can not sustain a cause of action against a consumer reporting agency, like TU, for failure to timely present a requesting party, like plaintiff here, with a copy of the credit report generated by that credit reporting agency on behalf of a third party, such as PNC Bank in the case at bar."

The basis of the Court's ruling is plain error as Robert Boyadjian did not at any time during the course of this action asserted **" a cause of action under the Fair Credit Reporting Act, 15 U.S.C. §1681 et. seq., against TU premised on inaccurate reporting , or any failure by TU to disclose to plaintiff the credit information it supplied to PNC Bank".**
Additionally, Robert Boyadjian did not at any time during the course of this action asserted **"a cause of action against a consumer reporting agency, like TU, for failure to timely present a requesting party, like**

plaintiff here, with a copy of the credit report generated by that credit reporting agency on behalf of a third party, such as PNC Bank".

> *The Second Circuit noted as much when it stated that*
> *"[i]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because*
> *of a lack of legal training." Tragath v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983).*
> *Because a civil litigant is not afforded an absolute right to counsel, Lassiter v. Dep't of Soc. Serv., 452 U.S. 18, 26-27 (1981), a pro se litigant in a civil court must be given an equity of arms or she will be denied any effective opportunity to vindicate her rights in court. Degan v. United States, 517 U.S. 820 (1996). Julie M. Bradlow, Procedural Due Process Rights of Pro Se Litigants, 55 U. Chi. L. Rev. 659 (1988).*

In addition, the basis of the Court's ruling in closing the case is, in addition to plain error, a constitutional error as Robert Boyadjian was not given the opportunity to access and present evidence relevant to the case in violation of his equal rights; further, his due process rights were ignored and forfeited by not addressing and discarding the main issue of the complaint.
Plaintiff was compelled to submit his address for year 1999, totally irrelevant to the case.
Plaintiff was denied access to most request for evidences, including subpoenas, directly related to mailing and to the case, such as third party mailer Lason, electronic files related to mailing for the contested dates, as well as mailing manifests and postage statements either from Trans Union Corporation or from the United States Postal Service.

United States constitutional equal rights to evidence and due process rights were forfeited.

Robert Boyadjian asserts, the Court's ruling was erroneous primarily by the misrepresentation of Trans Union Corporation which intentionally and erroneously mislead The Court by repeated allegations that Robert Boyadjian's only claim is **" a cause of action under the Fair Credit Reporting Act, 15 U.S.C. §1681 et. seq., against TU premised on inaccurate reporting , or any failure by TU to disclose to plaintiff the credit information it supplied to PNC Bank".**

The decision of The Court has permanently forfeited Robert Boyadjian's constitutional Equal Rights and Due Process Amendments, by not addressing the issue of the complaint, is plain error, is manifest injustice.

> *UNITED STATES v. AGURS, 427 U.S. 97 (1976)*
> *427 U.S. 97*
> *UNITED STATES v. AGURS*
> *CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*
> *No. 75-491.*
> *Argued April 28, 1976*
> *Decided June 24, 1976*
> *(d) The proper standard of materiality of undisclosed evidence, and the standard applied by the trial judge in this case, is that if the omitted evidence creates a reasonable doubt of guilt that did not otherwise exist, constitutional error has been committed. p. 112-114.*

Plain error is also evidenced, when responding to the Memorandum and Order of this Court entered on April 22, 2002, plaintiff submitted on May 18, 2002, the following letter of contentions.

"The Memorandum and Order of the Court entered on April 22, 2002, includes a citation from Defendant:

"According to defendant, plaintiff's sole contention in this litigation is that TUC failed to supply him with a copy of his credit report generated by TUC **at the request of the PNC Bank**..."

At no time plaintiff claimed a violation by Defendant TUC, for failure to supply a copy of his credit report generated by TUC at the request of the PNC Bank, although a request was made for such disclosure to determine if further violation was made by TUC, such as incorrect information.

Plaintiff's summary judgment motion of September 8, 2001, reads in part:

"Plaintiff requests the Court the option to pursue further violations, more specifically, incorrect credit information, if and when Defendant submits a copy of his credit report as submitted to PNC Bank in November 2000, in relation to plaintiff's loan application."

As of this writing only the following claims were asserted by plaintiff against TUC:

Plaintiff asserts that Defendant TUC has violated 15 USC Sec. 1681 (g) by not disclosing his credit report when requested on December 27, 2000.

2) Plaintiff asserts that Defendant TUC has violated a second time 15 USC Sec. 1681 (g) by not disclosing his credit report when requested on February 21, 2001, by certified letter, Exhibit 3, advising Defendant TUC, his intention to file a complaint if his credit report is not submitted within 20 days....."

No third party credit reports were requested or indicated in this letter of contention.

Plaintiff also contends that plain error on part of the Court was greatly influenced by Defendant's misrepresentation of the case in violation of Rule 60 (b) (3) misrepresentation.

Defendant erroneously misrepresented the facts and claimed on several occasions, that plaintiff has asserted a cause of action against Trans Union for the denial to submit plaintiff's credit report submitted to PNC. This claim although apparently, on the face of its ruling, was

accepted as true by the Court, was not substantiated by any evidence and no evidence was ever requested by the Court.

> *Fundamental to one's ability to litigate is the ability to obtain discovery of the* ***opposing party's evidence****. Without access to sanctions of an equal deterrent effect as those afforded a represented party,* ***a pro se litigant cannot effectively obtain discovery and therefore is denied the tools necessary to litigate****. Tragath, 710 F.2d at 95.*
>
> *A.* ***Equal access to discovery is inherent in the right to procedural due process.***
>
> *Procedural due process requires that no one be denied a liberty or property interest without both notice and the opportunity to be heard. Mullane v. Cent. Hanover Bank and Trust Co., 339 U.S. 306, 313 (1950). The doctrine is not rote in application. As stated by Chief Justice Burger in Little v. Streater, 452 U.S. 1, 5 (1981): Due process, "unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."*
>
> *Joint Anti-Facist Refugee Comm. v. McGrath, 341 U.S. 123, 162 (1951) (concurring opinion). Rather, it is "flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972).*

Circuit Court Judgment page 5 reads in part; "Although Boyadjian argues that his claim was simply that Trans Union did not provide his credit report in response to his requests, not that it did not provide the report generated for the bank, he has not shown that the District Court's ruling on the issue as he presents it would be different. Boyadjian asserts that this conclusion of the Circuit Court is inconsistent with the statutes and Boyadjian's initial claim for the following reasons:

The statutes referred to in Boyadjian's initial claim refer to15 USC Sec. 1681 (g) which requires every consumer credit organisation to disclose to the consumer upon written request, consumer's credit report; the statutes Sec. 1681n provides Civil liability for willful noncompliance. The statutes do **not** require consumer credit organisations to disclose upon written request, consumer's credit report generated for third parties.
The District Court's ruling would be different if the issue of the complaint is properly evaluated, Boyadjian did not assert a violation of third party consumer reports disclosure; Boyadjian did assert a disclosure violation for his own credit reports disclosures. Boyadjian concludes that the District Court did not exercise jurisdiction on the claim as presented. The District Court failed to adjudicate a claim properly presented before it. The District Court instead, due to Trans Union's misrepresentation, adjudicated a claim which does not exist and was not asserted by Boyadjian. Furtheremore the Circuit Court erroneously affirmed the decision. Boyadjian asserts a forfeiture of his right to a fair determination of his complaint.

The Second Circuit noted as much when it stated that
"[i]mplicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of a lack of legal training." Tragath v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983). Because a civil litigant is not afforded an absolute right to counsel, Lassiter v. Dep't of Soc. Serv., 452 U.S. 18, 26-27 (1981), a pro se litigant in a civil court must be given an equity of arms or she will be denied any effective opportunity to vindicate her rights in court. Degan v. United States, 517 U.S. 820 (1996). Julie M. Bradlow, Procedural Due Process Rights of Pro Se Litigants, 55 U. Chi. L. Rev. 659 (1988).

Circuit Court Judgment page 5 reads in part; "Finally, in denying Boyadjian's motion for summary judgment the District Court concluded that it appeared that Trans Union sent Boyadjian a copy of the entire file it had on him every time he requested his credit report.

The District Court failed to indicate the basis of this determination, furthermore, the sworn Affidavit submitted by Trans Union's regarding the mailing of credit reports has been questioned by The District Court and responded by Trans Union which indicated that the Affiant does not have personal knowledge of mailing activities. It was also revealed that Trans Union's mailing of consumer credit report disclosures were processed by third party Lason. Boyadjian's discovery requests from Lason was denied.

Boyadjian claims: The only violation asserted in the complaint against Trans Union was the failure to disclose consumer credit reports to the consumer (Robert Boyadjian) on two separate instances.
As Defendant claimed to have mailed the reports, the issue of the case is timely mailing.
Defendant did not submit any credible evidence of mailing consistent with any Statutes, Rules or federal case law mailbox rules.
Trans Union submitted a copy of a credit report, but failed to indicate the standard under which a copy of a document was ever accepted as evidence of mailing.
Boyadjian submitted an Affidavit of non receipt; The Court nevertheless granted summary judgment to Defendant.
Boyadjian contends; the decision of the Court was plain error, constitutional due process error, inconsistent with substantial justice, affects the substantial rights of Boyadjian and is not harmless.
Boyadjian respectfully requests The Court of Appeals for the Third Circuit to Relief Boyadjian from the

Judgment and Order of the District Court and Remand for further proceedings and adjudication of plaintiff's claim for violation of disclosure to Boyadjian by Trans Unjon of his credit report as authorized by the Fair Credit Reporting Act, 15 U.S.C. §1681(g) Entered on June 19, 2002.

Respectfully submitted December 2, 2003

s/ Robert Boyadjian

Robert Boyadjian – plaintiff/appellant

UNITED STATES DISTRICT COURT ORIGINAL
DISTRICT OF NEW JERSEY FILED
JAN 22 2003
ENTERED ON THE DOCKET on 1/24/03
WILLIAM . T.WALSH CLERK

WILLIAM T. WALSH, Clerk

By /s PP (Deputy Clerk)

ROBERT BOYADJIAN,
Plaintiff, Civil No. 01-3023 (AET)
v. MEMORANDUM AND ORDER
TRANS UNION CORPORATION, et.al.
Defendants.

This matter is before the Court on motion by the Plaintiff Robert Boyadjian to extend time to file notice of appeal pursuant to FED.R.APP.P. 4(a)(5) and (6). The Court has decided this motion after considering the written submissions of both parties and without oral arguments pursuant to FED. R. CIV. P. 78.

This Court granted summary judgment to the defendants on June 19, 2002 and denied Defendant's motion for re-argument on October 3, 2002. Plaintiff

filed and untimely notice of appeal on November 7, 2002. He then filed a motion to extend the time to file an appeal on December 9, 2002.

Pursuant to FED.R.APP.P. 4(a)(5), the district court may extend the time to file a notice of appeal if:

> (i) a party so moves no later than 30 days after the time prescribed by this rule 4(a) expires; and
>
> (ii) that party shows excusable neglect or good cause.

Plaintiff does not meet these requirements in order to give this Court jurisdiction to grant relief.

Next, in order to reopen the time to File and Appeal under FED.R.APP.P. 4(a)(6), three requirements must be met. Plaintiff fails to meet the first requirement: the motion must be filed within 180 days after the judgment or order is entered *or* within seven days after the moving party receive that notice of the entry, whichever is earlier.

In the instant case, the plaintiff does not meet the requirements for relief under either rule.

He filed his motion for an extension of time on December 9, 2002, more than 30 days beyond the proper date, November 4, 2002. In addition the plaintiff received timely notice of the initial entry of the Order Denying the Motion for Reconsideration, precluding relief under FED.R.APP.P. 4(a)(6).

Therefore, for the reasons stated above,

It is on this *21st* day of January, 2003,

ORDERED that the Plaintiff, Robert Boyadjian's motion to extend time to file a notice of appeal is **DENIED**.

s/ Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.

UNITED STATES DISTRICT COURT ORIGINAL
DISTRICT OF NEW JERSEY FILED MAR 17 2003
WILLIAM . T.WALSH CLERK
ENTERED ON THE DOCKET MAR 17 2003
WILLIAM T. WALSH, Clerk
By /s *SA* (Deputy Clerk)

ROBERT BOYADJIAN,
Plaintiff, Civil No. 01-3023 (AET)

v. MEMORANDUM AND ORDER

TRANS UNION CORPORATION, et.al.
Defendants.

This matter is before the Court on motion by the Plaintiff Robert Boyadjian to relieve plaintiff from the Memorandum and Order entered on June 19, 2002 and to reconsider its Order entered January 22, 2003, denying Plaintiff's request for an extension of time to file a notice of appeal pursuant to FED.R.APP.P. 4(a)(5) and (6). The Court has decided this motion after considering the written submissions of Plaintiff and without oral arguments pursuant to FED. R. CIV. P. 78.

This Court granted summary judgment to the defendants on June 19, 2002 and denied the plaintiff's motion for re-argument on October 3, 2002. Plaintiff filed and untimely notice of appeal on November 7, 2002. He then filed a motion to extend the time to file an appeal on December 9, 2002 and this Court denied the motion on January 22, 2003.

The Court has no basis under the law to grant Plaintiff's request for relief from its Order dated June 19, 2002 which properly granted summary judgment to the defendants. In addition, Plaintiff's arguments do not merit a reconsideration of this Court's decision denying

his request for an extension to file an appeal under Local Rule 7.1(g). SPRIG v. Monsanto Co., 727 F. Supp. 876, 878 (D.N.J. 1989), aff'd 891 F.2d 283 (3d Cir. 1989).

Therefore, for the reasons stated above,

It is on this *17st* day of March, 2003,

ORDERED that the Plaintiff, Robert Boyadjian's motion to relieve him from judgment is **DENIED**; and it is further

ORDERED that the Plaintiff's motion for reconsideration is **DENIED**.

s/ Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ORIGINAL
FILED
OCT 03 2002
WILLIAM . T.WALSH
CLERK

ENTERED ON THE DOCKET OCT 03 2002
WILLIAM T. WALSH, CLERK
By /s *SA* (Deputy Clerk)

ROBERT BOYADJIAN,
Plaintiff,
v.

Civil No. 01-3023 (AET)

MEMORANDUM AND ORDER

TRANS UNION CORPORATION, et.al.
Defendants.

This matter is before the Court on motion by the Plaintiff Robert Boyadjian for reconsideration of this Court's Order entered on June 19m 2002 granting defendant's motion for summary judgment. The Court

has decided this motion after considering the written submissions of Plaintiff without oral argument pursuant to FED. R. CIV. P. 78. For the reasons set forth below, the Plaintiff's motion will be DENIED.

Before reaching the merits of motion for re-argument, a court must decide wether the arguments are properly raised under Local Rule 7.1(g). The motion may address only those matters of fact or issues of law which were presented to, but not considered by, the court in the course of making the decision at issue. SPIRG v. Monsanto Co., 727 F. Supp. 876, 878 (D.N.J.), aff'd, 891 F.2d 283 (3d Cir. 1989). Thus, matters may not be introduced for the first time on a reconsideration motion. See, e.g., Resorts Int'l Inc. v. Greate Bay Hotel and Casino. Inc., 830 F. Supp. 826, 831 (D.N.J. 1988); Egloff v. New Jersey Air National Guard, 684 F. Supp. 1275, 1279 (D.N.J. 1988). Absent unusual circumstances, a court should reject new evidence which was not presented when the court made the contested decision. Resorts Int'l, 830 F. Supp. at 831 n.3. Moreover, Rule 7.1(g) does not allow parties to restate arguments which the court has already considered; rather, a difference of opinion with the court's decision should be dealt with through the normal appellate process. Florham Park Chevron. Inc. v. Chevron U.S.A.., Inc., 680 F. Supp. 159, 162 (D.N.J. 1988); See also Chicosky v. Presbyterian Medical Ctr., 979 F. Supp. 316, 318 (D.N.J. 1997); NL Industries, Inc. v. Commercial Union Ins. Co., 935 F. Supp. 513, 516 (D.N.J. 1996).

In addition, the court will grant a motion for reconsideration only if the movant establishes that the court overlooked "dispositive factual matters or controlling decisions of law". Rouse v. Plantier, 997 F. Supp. 575, 578 (D.N.J. 1998); See also, Starr v. JCI Data Processing Inc., 767 F. Supp. 633, 635 (D.N.J. 1991). Relief under Rule 7.1(g) will be granted "very

sparingly." Maldonado v. Lucca, 636 F. Supp. 621, 630 (D.N.J. 1986).

In the instant case, Plaintiff fails to provide this Court with the required reasons to reconsider his arguments ruled upon on June 19, 2002. He does not present dispositive factual matters overlooked by this Court nor does he provide controlling decisions that this Court overlooked. Accordingly, for the forgoing reasons, Plaintiff's motion for re-argument is denied.

It is on this 24th day of Sept., 2002,

ORDERED that the Plaintiff, Robert Boyadjian's motion for reconsideration is DENIED.

s/ Anne E. Thompson

ANNE E. THOMPSON, U.S.D.J.